

09-02-08

Attorney's Docket No.: 119356-00055/ 4804US

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Aladar A. Szalay et al.  
Serial No. : 10/516,785  
Filed : June 27, 2005

Art Unit : 1636  
Examiner : Daniel M. Sullivan  
Customer No.: 77202  
Confirm. No.: 7336

Title : Light emitting microorganisms and cells for diagnosis and therapy of diseases associated with wounded or inflamed tissue

**Mail Stop: Amendment**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**TRANSMITTAL**

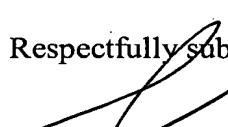
Dear Sir:

Transmitted herewith are an Information Disclosure Statement (5 pages), Form PTO-1449 (1 page), cited non U.S. patent documents listed on the 1449 (1 volume), documents listed in table of Information Disclosure Statement (3 documents), and a return postcard for filing in connection with the above-captioned application. The Commissioner is hereby authorized to charge any other fees or any unpaid amount that may be required in this application during its entire pendency, or credit any overpayment, to Deposit Account No. 02-1818.



The Commissioner is hereby authorized to charge the fee for the extension of time and any other fee that may be due in connection with this and the attached papers or with this application during its entire pendency to Deposit Account No. 02-1818. A duplicate of this sheet is enclosed.

Respectfully submitted,

  
Stephanie Seidman  
Reg. No. 33,779

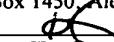
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**Address all correspondence to: 77202**

Stephanie Seidman  
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**CERTIFICATE OF MAILING BY "EXPRESS MAIL"**  
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Date of Deposit August 29, 2008

I hereby certify that this paper is being deposited with the United States Postal "Express Mail Post Office to Addressee" Service under 37 CFR §1.10 on the date indicated above and is addressed to: Commissioner for Patents, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

  
Kethya Teuk

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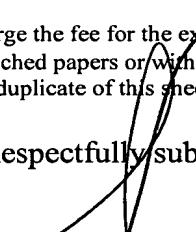
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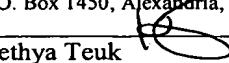
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Alexandria, VA 22313-1450

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT IN  
ACCORDANCE WITH 37 C.F.R. §§ 1.97-1.98**

Dear Sir:

Because this Supplemental Information Disclosure Statement is filed after the receipt of a First Office Action on the Merits for the above-captioned application, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 02-1818.

In accordance with the duty of disclosure imposed by 37 C.F.R. §1.56 to inform the Patent Office of all information known by Applicant or Applicant's representative that may be material to the examination of the subject application, Applicant's representative hereby provides this Supplemental Information Disclosure Statement that is prepared in accordance with 37 C.F.R. §§1.97-1.98. Forms PTO-1449 (1 page) and copies of the cited non U.S. Patent documents are provided herewith in connection with the above-captioned application.

The documents cited on the Forms PTO-1449 are in the English language, with the exception of items noted below. Item AE (JP 09-502993) is in the Japanese language and an English language equivalent (AU 709336) is provided (Item AF). Hence, in accordance with the requirements of 37 C.F.R. §1.98, as amended effective March 16, 1992, no further explanation of the listed items is necessary.

In accordance with the duty of disclosure imposed by 37 C.F.R. §1.56 to inform the Patent Office of all information known by Applicant or Applicant's representative that may be material to the examination of the subject application, this Supplemental Information

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Kethya Teuk



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Appl. No.: 10/516,785  
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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**CERTIFICATE OF MAILING BY "EXPRESS MAIL"**

Kethya Teuk declares as follows:

1. I am a resident of Spring Valley, CA.
2. I am an employee of:  
Bell, Boyd & Lloyd LLP  
3580 Carmel Mountain Road, Suite 200  
San Diego, California 92130.
3. On August 29, 2008, I deposited in the mail, "Express Mail Post Office to Address" service of the United States Postal Service, the contents of the envelope for which "Express Mail" receipt No. EM 247738050 US was issued, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
3. Attached hereto is a true copy of the "Express Mail" receipt No. EM 247738050 US.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the above-identified patent application or any patents issued thereon.

Date: August 29, 2008

Respectfully submitted,

  
Kethya Teuk

Disclosure Statement (sIDS) includes a table listing Office Actions cited in related and corresponding U.S. and foreign Patent Applications, and other documents (Documents 1-3). In accordance with the requirements of 37 C.F.R. 1.98, the following documents are listed for consideration by the Examiner:

- 1) Examination Report, issued January 30, 2008, in connection with European Patent Application No. 02012552.2 (Attorney Docket No. 0119356-00059/4804EP).
- 2) Examination Report, issued February 1, 2008 (with English translation), in connection with corresponding Chinese Patent Application No. 03812787.3 (Attorney Docket No. 0119356-00058/4804CN), which is a national stage filing of International Patent Application No. PCT/EP03/05907. The instant application is a national stage filing of the same International Patent Application No. PCT/EP03/05907.
- 3) Office Action, issued March 18, 2008, in connection with U.S. Patent Application Serial No. 10/866,606 (Attorney Docket No. 0119356-00023/4803B).

The table below lists Documents 1-3 and includes a column that provides a space next to the document to be considered, for the Examiner's initials. This Information Disclosure Statement (IDS) includes the application number of the application in which the IDS is being submitted, a column that provides a blank space next to each citation for the Examiner's initials, a heading on the listing that clearly indicates the list is an Information Disclosure Statement, and copies of Documents 1-3. Therefore, this sIDS is in compliance with 37 CFR §§ 1.97, 1.98 and MPEP § 609 and Applicant respectfully requests that Examiner consider and initial all information listed in the table below.

Examiner Initial	Document No.	Document
	1	Examination Report, issued January 30, 2008, in connection with European Patent Application No. 02012552.2
	2	Examination Report, issued February 1, 2008, in connection with corresponding Chinese Patent Application No. 03812787.3
	3	Office Action, issued March 18, 2008, in connection with U.S. Patent Application Serial No. 10/866,606

In the Office Action dated January 28, 2008, the Examiner initialed and returned Forms PTO-1449 from the Information Disclosure Statement (IDS) submitted on November 8, 2007. The IDS filed on November 8, 2007 contained a Table listing Office Actions cited in related and corresponding U.S. and foreign Patent Applications, and other documents (Documents 1-6). This Table was **not** initialed by the Examiner. The IDS submitted

November 8, 2007 included the application number of the application in which the IDS was being submitted, a column that provides a blank space next to each citation for the Examiner's initials, a heading on the listing that clearly indicates the list is an Information Disclosure Statement, and copies of listed documents. Therefore, the November 8, 2007 IDS is in compliance with 37 CFR §§ 1.97, 1.98 and MPEP § 609 and Applicant respectfully requests that Examiner consider and initial all information listed in the table submitted in the IDS filed November 8, 2007.

Applicant also makes known to the Examiner the following U.S. and international applications, which are commonly owned and/or have one or more inventors in common.

<u>Serial No.</u>	<u>Filing Date</u>	<u>Docket No.</u>
US 12/148,542	04/17/08	0119356-00126/ 4802F
US 12/080,766	04/04/08	0119356-00127/ 4816B
US 12/156,135	05/30/08	0119356-00128/4817
PCT/US2008006917	05/30/08	0119356-00129/4817PC
US 157,960	06/13/08	0119356-00131/ 112
PCT/US2008/07377	06/13/08	0119356-00132/ 112PC

### **Inventorship**

The instant application and U.S. Patent Application Serial No. 10/849,664 (Attorney Docket No. 0119356-00054/4804B) (the '664 application), filed May 19, 2004, now abandoned, include claims directed to methods of detection/visualization of wounds, wounded tissues, inflammation sites and inflamed tissues, by administering microorganisms. The inventive entity listed on the '664 application differs from the inventive entity listed on the instant application. The inventive entity listed on the '664 application as originally filed is Dr. Aladar Szalay and Dr. Douglas A. Will. The inventive entity listed on the instant application as originally filed is Dr. Szalay, Dr. Shahrokh Shabahang, and Dr. Yong A. Yu. Since the '664 application and the instant application have very similar specifications and some overlapping claims, but different inventive entities, a review to confirm inventorship of the instant application was conducted.

To review inventorship of the instant application, discussions were conducted with Dr. Szalay and Dr. Yu and Dr. James Chang, in-house counsel for Genelux Corporation. In addition, Chang conducted a review of Genelux records and had further discussions with

named inventors Szalay and Yu. Drs. Szalay and Yu confirmed that Szalay, Yu and Shabahang contributed to inventorship of the instant application. None of Genelux's company records, discussions with the named inventors Szalay and Yu by Chang, or discussions with Dr. Szalay, current CEO, revealed any contributions of Dr. Will to conception of any claim in the instant application as originally filed or currently pending.

Dr. Will was named on the '664 application, but is not named on the instant application. Dr. Will was a founder of Genelux in September 2001, and was the first member of the Board of Directors and became President of the Corporation in October 2001. In January 2002, Dr. Will became Chief Executive Officer (CEO). In April 2003, Dr. Will resigned from the Board of Directors and his employment as President and CEO was terminated for cause by the Board. During the time period between September 2001 and April 2003 the European application EP 02012552.2, to which the instant application ultimately claims priority, and U.S. Patent Application Serial No. 10/163,763, which is the parent of the '664 application, were filed. The inventive entity on the European application EP 02012552.2 was Dr. Szalay and the inventive entity on U.S. Patent Application Serial No. 10/163,763 is the same as the inventive entity on the '664 application. The instant application and the '664 application were filed after April 2003.

Letters were sent to Dr. Will to schedule a discussion regarding inventorship and/or to provide any evidence in his possession of his inventive contribution. Dr. Will did not provide any evidence of his inventive contribution and requested payment of \$15,000 for any discussion, which the company declined to pay. As noted above, the review of inventorship confirmed that Drs. Szalay, Yu and Shabahang contributed to inventorship of the instant application. In view of the fact that none of the other inventors recalled any contribution by Dr. Will to the instant application, and no company records revealed any contribution, it was concluded that the inventive entity is correctly named in the instant application.

Although these documents and information are made known to the Patent and Trademark Office in compliance with Applicant's duty of disclosure, such disclosure is not to be construed as an admission by Applicant or Applicant's representative that any of the documents or information, singly or in any combination thereof, is effective as prior art against the subject application. In accordance with 37 C.F.R. §1.97(g) and (h), the filing of this Supplemental Information Disclosure Statement shall not be construed to mean that a

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Supplemental Information Disclosure Statement

search has been made or that no other material information as defined in 37 C.F.R. §1.56(b) exists.

Applicant respectfully requests that the Examiner review the foregoing documents and they be made of record in the file history of the above-captioned application.

Respectfully submitted,

Stephanie Seidman  
Reg. No. 33,779

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